



# COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0165

## United States Copyright Claims Board

READ ASAP LTD

CLAIMANT

v.

Cloudflare, Inc.

RESPONDENT

### ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board finds that your claim does not comply with the requirements of the CASE Act and related regulations. The claim cannot move forward unless it is amended.

If you wish to proceed with this claim, you must file an amended claim by **December 5, 2022**. If you do not, the Board must dismiss your claim without prejudice, although you may file again in the future before the Board or in federal court. If you file an amended claim and it is found compliant, you will be notified and directed to proceed with service. There is no additional filing fee for an amended claim. 17 U.S.C. § 1506(f)(1)(B).

To make your amended claim compliant, you must resolve the issue identified below. [37 C.F.R. § 224.1\(c\)\(2\)](#). You may also choose to correct or edit any errors or other information in your claim before you file it again. You do not need to provide a legal argument in your claim – just a statement of facts and circumstances. Being specific in your description gives the other party and the Board more information about your claim. There is no character limit so please be as detailed as possible.

#### Copyright Infringement Claim – Infringing Activity

You have brought a copyright infringement claim before the Board. Your claim must make enough factual allegations to support each “element” of the claim. The elements of a copyright infringement claim are:

1. You own a valid copyright in the work, or have been given an exclusive license to the copyright rights at issue in the work,
2. The respondent used one of your exclusive rights in the work without permission,
3. The respondent had access to your work, meaning a reasonable opportunity to view or hear your work, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your claim does not provide enough facts about any infringing activity by the respondent. The “Describe the infringement” section of your claim describes infringing activity by others not listed as respondents to the claim: “The infringing sites have taken my book that I’ve licensed to other platforms and put it in public for free.” A video entitled “Infringing facts,” filed as supplemental documentation with your claim, appears to depict use of the allegedly infringed work on the website infobagh.com. Your “List of Evidence,” which describes those supplemental documents, states that the video “can prove that pirated websites infringe our works.”

By contrast, your allegations about Cloudflare do not show how it directly committed infringement. Instead, you appear to describe responses that Cloudflare made, which you found unsatisfactory, to your inquiries about the allegedly infringing “pirated website.” Your “List of Evidence” describes one file submitted with your claim, entitled “[Evidence6: Chat record with the claimant \(cloudflare\)](#),” as a document “[w]hich can prove the website service provider [Cloudflare] did not fulfill the reasonable duty of care and did not provide us with effective information, which made our rights protection work particularly difficult to carry out[.]” Elsewhere, in your “[application to modify the claim](#)” filed on October 18, 2022, you assert that “due to the service provider [Cloudflare]’s inaction, we haven’t been able to contact pirated websites[.]” Your contentions that Cloudflare did not assist you in enforcing your copyright in the manner you wanted, without more, would not make it liable for infringement.

To address this issue in an amended claim, please provide more details and background regarding this element. You must state facts that describe acts by Cloudflare that constitute copyright infringement, not “inaction.”

#### Copyright Infringement Claim – Online Service Provider

In your claim, you checked the box to state that respondent Cloudflare is *not* an online service provider. However, your allegations against Cloudflare are entirely based on its response to your “DMCA copyright infringement complaint” about allegedly infringing content that others posted on infobagh.com. The “Chat record” document filed with the claim appears to be copies of emails that your authorized representative and a Cloudflare representative exchanged in August and September 2022, concerning your request for contact information for infobagh.com’s hosting provider or its website provider. In those emails, your representative described Cloudflare as a “network service provider.” Those contentions appear to contradict your allegation that the respondent is not an “online service provider.”

In this context, an “online service provider” is a provider of online services to store (and make available), refer to, provide access to, or link to material that is available online. Online service providers include content-sharing websites and internet search engines, among other services.

“Safe harbors” in section 512 of the Copyright Act shield certain online service providers from paying damages for copyright infringement claims if, among other things, the online service providers take steps to quickly remove or disable access to infringing material when a copyright owner notifies them about the infringement through a proper takedown notice. To avoid liability, online service providers must follow procedures specified in section 512 when they receive takedown notices alleging infringement, and counter-notices seeking the re-posting of the allegedly infringing material. An infringement claim against an online service provider that is eligible for a section 512 safe harbor must state facts that indicate that the respondent did not follow those procedures. If the respondent is operating as an online service provider, then under the CASE Act, the claim cannot be compliant unless you affirm that you sent the online service provider a section 512 notice of infringement, and that it “failed to remove or disable access to the material expeditiously upon the provision of such notice.” 17 U.S.C. § 1506(f)(1)(C)(i).

To address this issue in an amended claim, you must state facts that either identify the respondent (1) engaging in infringing activity on its own, not on the basis of infringing material posted on its website by others (and so not in the capacity of an online service provider), or (2) failing to follow the safe harbor procedures for an online service provider. Please visit the [section 512 page](#) and the discussion at pages 18-19 of the chapter on [Starting an Infringement Claim](#) in the CCB Handbook for additional information about what is required for an infringement claim against an online service provider protected by a section 512 safe harbor.

### Request to Amend

On October 18, 2022, during the initial compliance review period, you filed [an “application to modify” the claim](#). “In determining whether to grant leave to amend a pleading, the Board shall grant leave if justice so requires[.]” [37 C.F.R. § 222.12\(d\)\(3\)](#). Specifically, you requested leave to amend the “Description of harm suffered and relief sought” section of your claim to the following:

Due to the infring[e]ment, it directly led to the continuous decline in the income of the authors we signed. We hope that the pirated websites will apologize to us and immediately remove our exclusive works. And due to the service provider’s inaction, we haven’t been able to contact pirated websites, we need the service provider and the pirated network to bear joint liability and jointly compensate us for 15000 dollars.

Because the claim is noncompliant and must be amended, the application is moot. You are free to revise any aspect of the claim when filing an amended claim. However, if you file an amended claim, it may not seek relief from a non-party. An amended claim that includes the proposed “Description of harm suffered and relief sought” section would not be compliant with the CASE Act, because the Board cannot order “the service provider and the pirated network [by which you seem to mean Cloudflare and infobagh.com] to bear joint liability and jointly compensate” you. The Board cannot order a non-party to pay damages. Cloudflare is the only respondent identified in the claim, and the Board can only make a finding of joint and several liability against “[p]arties to a proceeding.” 17 U.S.C. § 1505(f). If you choose to amend, you may add additional respondents but you must address all of the elements of each claim that you bring against each respondent.

To submit an amended claim, log into your eCCB account and take the following steps.

1. From your dashboard, click the “**Amend claim**” button and select your docket number from the dropdown list.
2. Your claim will unlock for editing. The information you originally entered will appear in the same order as in your original claim.
3. Make any necessary edits. If your claim included supplementary documents, you must re-upload any documents you wish to include in the amended claim on the “**Documentation**” page. Please include only documents that are directly related to your claim.
4. Once you have completed your edits, continue to click through the fillable claim form until you reach the “**Review**” page. The Review page includes all the information that you have provided in the claim up to this point. Carefully double-check the information on this page. If you have any corrections, you can select “**Edit**” to revise any entries necessary. Each section of information has an “**Edit**” button, which will take you back to that section so you can make changes. After you make changes, you can click “**Save & review**” to return to the Review page. Please review your claim carefully. Once you submit your amended claim, you will be unable to edit the claim while it is in compliance review.
5. Once you have completed your review and any revisions, you must confirm that the information in your claim is accurate and truthful to the best of your knowledge. To complete the declaration, type your full name into the “**Digital signature**” box near the bottom of the “**Review filing**” page and click “**Agree & submit.**”

If you have questions, please contact [asktheboard@ccb.gov](mailto:asktheboard@ccb.gov). Include your docket number in the subject line. The Board is unable to provide legal advice. We can only provide legal information and assistance concerning Board procedures and requirements. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

Copyright Claims Attorney

November 4, 2022